

# **TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1941**

**No. 58**

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**DISTRICT OF COLUMBIA, PETITIONER,**

**VS.**

**HENRY C. MURPHY**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA**

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**PETITION FOR CERTIORARI FILED APRIL 25, 1941.**

**CERTIORARI GRANTED MAY 26, 1941.**



# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 58

DISTRICT OF COLUMBIA, PETITIONER,

vs.

HENRY C. MURPHY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA

## INDEX.

	Page
Proceedings before Board of Tax Appeals for the District of Columbia .....	1
Petition .....	1
Exhibit "A"—Income tax return for calendar year 1939 .....	3
Findings of fact and opinion .....	4
Decision .....	11
Petition for review .....	12
Stipulation as to evidence presented at hearing .....	14
Statement of points to be relied upon on review .....	15
Designation of record .....	16
Clerk's certificate .....	17
Proceedings in United States Court of Appeals for the District of Columbia .....	19
Minute entry of argument .....	19
Opinion, Miller, J. ....	19
Judgment .....	23
Designation of record .....	24
Clerk's certificate .....	24
Order allowing certiorari .....	25

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1      BOARD OF TAX APPEALS FOR THE  
DISTRICT OF COLUMBIA

RECEIVED AND FILED SEP. 16, 1940

HENRY C. MURPHY, Petitioner,

v.

DISTRICT OF COLUMBIA, Respondent.

DOCKET No. 346

PETITION

The above named petitioner petitions for a cancelation of an assessment of taxes against him and alleges as follows:

1. The petitioner is an individual with residence at 2700 Q Street, Northwest, District of Columbia.

2. The tax in controversy is a personal income tax for the calendar year ended December 31, 1939, and in the amount of fifty-one and 10/100 (\$51.10) dollars, of which twenty-five and 55/100 (\$25.55) dollars has been paid.

3. The return of taxpayer, in respect of which said tax was assessed, was filed (mailed) on February 21, 1940, and the first half of the tax was paid by the petitioner under protest in writing on the same date. A copy of the material portions of the return is attached hereto as Exhibit "A".

4. The Office of the Assessor of the District of Columbia erred in not granting the taxpayer's claim for a refund of the tax because the taxpayer is not domiciled in the District of Columbia, as wrongfully held by the Office of the Assessor.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

A. The said petitioner is domiciled in the State of

Michigan, County of Wayne, as is evidenced by the fact that he is a legal resident of said State and County, and is a registered voter therein.

WHEREFORE, the petitioner prays that this Board may hear the proceeding, and cancel the said taxes levied against the petitioner.

(Signed) HENRY C. MURPHY,  
2700 Q Street, Northwest,  
District of Columbia.

I, HENRY C. MURPHY, being duly sworn, say that I am the petitioner above named; that I have read the foregoing petition, and that the statements contained therein are true, except those stated to be upon information and belief, and those I believe to be true.

(Signed) HENRY C. MURPHY

Subscribed and sworn to before me this 13th day of September, 1940.

(Signed) H. WARD STUTLER,  
*Notary Public, D. C.*

My Commission expires July 14, 1945

[NOTARIAL SEAL]



2/21 - Mailed check  
for \$255

No. \_\_\_\_\_

### Receipt

## 1939 • INCOME TAX • 1939

GOVERNMENT OF THE DISTRICT OF COLUMBIA

If receipt is required fill in name and address below. This receipt not valid unless collector's stamp appears hereon.

NAME Henry C. Murphy  
(Type or Print)  
ADDRESS 2700 "Q" Street, N. W.  
Washington, D. C.

MAKE CHECK PAYABLE TO COLLECTOR OF TAXES, D. C.

*Do not detach*

Page 1

FORM D-40

## DISTRICT OF COLUMBIA INDIVIDUAL INCOME TAX RETURN For Calendar Year 1939

or fiscal year began \_\_\_\_\_, 1938, and ended \_\_\_\_\_, 1939

To be filed with the Assessor D. C. not later than the 15th day of the third month following the close of your taxable year

**FOR NET INCOMES OF MORE THAN \$5,000 FROM SALARIES, WAGES,  
DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM  
OTHER SOURCES REGARDLESS OF AMOUNTS**

Print Name And Address Plainly

Henry C. Murphy

(Name) (Use given names of both husband and wife, if this is a joint return)

2700 "Q" Street, N. W.

(Street and number, or rural route)

Total tax (from item 30)	\$	51	10
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INDICATE ABOVE THE PROPER AMOUNT

Collector's Stamp

**COPY TO BE  
RETAINED BY  
TAXPAYER**

Credit 9830 Income Taxes

Class \_\_\_\_\_

Serial No. \_\_\_\_\_

\$ \_\_\_\_\_  
Cash Check M.O.  
Amount of Payment

Do not write in above space



(Before Preparing This Return, Read The Instructions Carefully)

Item and  
Instruction No.

### INCOME

1. Salaries and other compensation for personal services. (From Schedule A)
2. Dividends
3. Interest on bank deposits, notes, mortgages, etc.
4. Interest on corporation bonds
5. Income (or loss) from partnerships, syndicates, pools, etc. (Furnish names and addresses):
6. Income from fiduciaries. (Furnish names and addresses):

7. Rents and royalties. (From Schedule C)
8. Income (or loss) from business or profession. (From Schedule D)
9. Gain (or loss) from sales or exchanges of property other than capital assets. (From Schedule E)
10. Other income (including income from annuities). (From Schedule F)
11. Total income in items 1 to 10. (Enter ascertainable income in Schedule B)

\$	5994	91
	140	-
	1	84
	10	-

### DEDUCTIONS

12. Contributions paid. (Explain in Schedule H)
13. Interest. (Explain in Schedule I)
14. Taxes. (Explain in Schedule J)
15. Losses other than from business or profession. (Explain in Schedule K)
16. Bad debts. (Itemize and explain in separate schedule)
17. Other deductions authorized by law. (Explain in Schedule M)
18. Total deductions in items 12 to 17
19. Net income (item 11 minus item 18)
20. Less: Personal exemption. (From Schedule N-1)
21. Credit for dependents. (From Schedule N-2)
22. Total of items 20 and 21
23. Taxable income (item 19 minus item 22)

\$	44	-
	20	-
	10	-
		14
\$	6,072	75
\$	1,000	-
		1,000
\$	5,072	75

### COMPUTATION OF TAX

DIVISION OF TAXABLE INCOME (See Instructions 24-28)		1. Amount	2. Rate of Tax	3. Amount of Tax
24. \$0 to \$5,000	\$	5,000	1%	\$ 50
25. \$5,000 to \$10,000		72	1½%	1 10
26. \$10,000 to \$15,000			2%	
27. \$15,000 to \$20,000			2½%	
28. Over \$20,000			3%	
29. Total taxable income (Items 24 to 28, column 1)	\$	5,072 75		\$ 51.10
30. Total tax (Items 24 to 28, column 3)				

BEFORE THE BOARD OF TAX APPEALS  
FOR THE DISTRICT OF COLUMBIA

HENRY C. MURPHY, Petitioner,

v.

DISTRICT OF COLUMBIA, Respondent.

DOCKET NO. 346

RECEIVED AND FILED OCT. 24, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

FINDINGS OF FACT AND OPINION

The petitioner paid to the District of Columbia an income tax for the calendar year 1939, and simultaneously filed with the Assessor a claim for refund. The Assessor disallowed such claim. The petitioner alleges that such action of the Assessor was erroneous for the reason that the petitioner was not domiciled in the District of Columbia at any time during the calendar year 1939, but was domiciled during that period in Detroit, Michigan.

FINDINGS OF FACT

The petitioner is an individual. He is a single person. He resides in an apartment in the District of Columbia furnished and equipped with his own furniture and equipment.

The petitioner was born in New London, Connecticut in 1905. When he was five years old he moved with his parents to Los Angeles, California, where he resided until 1926, when he removed to Berkeley, California. In 1929 the petitioner completed his course of studies at Brown University. Immediately thereafter he accepted employment in a trust company in Detroit, Michigan, of which one of his former professors at Brown University was vice-president. The petitioner took up his residence in Detroit, living first in a rooming house and

later in an apartment. He became a registered voter in Wayne County, Michigan, and still is such; and has ever since voted in the elections and primaries there, the last time being in the Michigan primaries in September 1940.

5 With the exception of a year's leave of absence from the trust company, during which he again attended Brown University, the petitioner resided and was employed in Detroit from 1929 to 1935.

In January 1935, the petitioner accepted employment in the District of Columbia with the Treasury Department of the United States. Concerning such employment the residence of the petitioner in the District of Columbia, the petitioner testified as follows:

"Q. (By the Board) What sort of an appointment was it in 1935 that you came here to take?

"A. In January 1935, I took a job as economist in the Treasury Department which did not require Civil Service status. In July 1938, it was blanketed into Civil Service and my standing has been dated back to 1935, which was the time I originally came to Washington. I hope to retain the position I have in the Federal Government indefinitely but if I don't I will be going back to Detroit because that is where all my business connections are. I have kept in touch with the people with whom I was in business there and except for the employment here with the Federal Government, Detroit is my home. I registered in Michigan. They have a permanent registration law by which if you vote every two years you will be continued to vote permanently. I voted in the primaries in September.

"Q. Do your people live in California?

"A. Yes.

"Q. Have you a home in Detroit?

A. No, I have no property of my own there. I have lived there and voted there and it is the only place where I have connection other than with the Federal Govern-

ment. It is the place to which I will return if I ever become dis-employed by the Government, which I hope will not happen. I would return to Detroit."

\* \* \* \* \*

"A. I understood you to state you have no property in Detroit at the present time.

"A. That's correct.

"Q. What are the business associations which you have there and which you have referred to?

"A. During the time I was there I was an official of the trust company and I have continued in close contact with the bank and the officials ever since. When they come to Washington they call me and I have been given to understand that if I ever want to come back with them I can do so.

"Q. Have you any business connection with them now?

"A. No. It would be quite inappropriate that I should as an employee of the Federal Government. They told me

I could come back any time I left the Government.

6

There are a great many people with whom I have kept in contact since I left Detroit and that is where I would go to get a job if I left the Government.

"Q. The question that naturally arises is that if your contacts in Detroit are so satisfactory and there is some degree of certainty with a standing officer of the banking institution there, why don't you go back to Detroit instead of staying in Washington?

"A. I am happy at my present job. I make \$6,500 here and in Detroit I only made \$6,000. My work is very interesting here in the Treasury and it is valuable experience. I would be happy to continue at the work in the Treasury. I don't think I can improve my work returning to Detroit. However, my present work would be helpful to me if I did return to Detroit.

"Q. In two instances you have moved from one place to another and changed your residence. You went to De-

etroit and stayed there five years then came to Washington. What is the difference between your mental operation after you went to Detroit and when you first came to Washington as to the tenure of residence?

"A. When I first went to Detroit I thought of a career. I had been a student and I thought I was starting something new. When I came to Washington my original idea was to get two or three years' experience which would be valuable to me elsewhere.

"Q. But you have since abandoned that idea?

"A. I can say this—at the end of five years here I am no nearer leaving than when I came. You probably don't have the same feeling of permanency here that you would in Detroit.

"Q. You didn't have much of a feeling of permanency in Detroit when you left there to come to Washington, did you?

"A. No, although I can say that when I left Detroit to come to Washington it was sudden. It was an offer that I couldn't turn down.

"Q. After you were here two years you say you abandoned the idea you had which was somewhat nebulous?

"A. The idea was nebulous in the first place but I can not say it was abandoned. It has become attenuated. It depends on the circumstances.

"Q. If you were offered a position in Boston, New York, or St. Louis you—which is superior to your position here, you would go there, wouldn't you?

"A. I very likely would.

"Q. You are not insistent that such place be Detroit?

"A. I have a preference for Detroit. It is a place where I would fit in more easily.

"Q. Suppose your friend who is in Detroit moved to St. Louis to a bank there—

"A. He just came from Kansas City to Detroit after the banking holiday. These things are transient. I doubt

if any of us would hesitate to make the change if we could better ourselves.

"Q. But you would go there if you could better yourself?"

"A. Yes.

"Q. Suppose you were offered a satisfactory position in New York, would you go there?"

"A. Yes.

"Q. But until such satisfactory position presents itself you will continue at the Treasury Department, provided your work is as attractive as it is now?"

"A. That's right.

"Q. The thing I meant to suggest, and what I understood you to say your attachment to Detroit was because of your friends there. If you had that contact elsewhere would you go there—if this friend of yours who is in the bank in Detroit were to go elsewhere would you go with him?"

"A. That is correct."

The petitioner claims a "legal residence" in Detroit, Wayne County, Michigan.

After considering all of the evidence the Board finds as a fact that when the petitioner came to reside in Washington, upon his acceptance of employment in the Federal Government in 1935, he had an intention to remain and make his home in the District of Columbia for an indefinite period of time; and that such intention has ever since, and still does remain with him; and that if he has any intention to return and make his home in Detroit it is a floating intention.

The petitioner duly filed a return of his income for the calendar year 1939, and computed the tax therein to be \$51.10. There is no dispute concerning such computation. On February 21, 1940 the petitioner paid one half of such tax, or the sum of \$25.55, to the Collector of Taxes. Simultaneously he filed with the Assessor a claim for refund of such tax. The Board takes notice of the fact that such procedure was sug-

gested by the Assessor to those persons who questioned the propriety of the tax. On July 17, 1940, the Assessor disallowed the petitioner's claim for refund. This proceeding was filed September 11, 1940.

8

## OPINION

The only question of law here presented is whether or not, under the evidence and the findings of fact of the Board, the petitioner was domiciled in the District of Columbia on December 31, 1939, the last day of the taxable year. That question must be answered because the District of Columbia Income Tax Law imposes an income tax on those individuals only who are domiciled in the District of Columbia on the last day of the taxable year (Section 2).

The Board has found as a fact that when the petitioner came to the District in 1935 to accept Federal employment he had an intention to reside and make his home in the District for an indefinite period of time. The Board also has found that the petitioner was during 1939, and still is a registered voter in Wayne County, Michigan; and that he has voted regularly at elections and primaries therein. The petitioner claims what is generally known as a "legal residence" in Michigan. He has not, however, localized such residence in any dwelling house or other structure, or in any particular place in Michigan, except to say: "Detroit is my home."

The petitioner contends that the Board must hold that, under the decision of the Court of Appeals in *Surrency v. District of Columbia*, ——— App. D. C. ———, 113 F. (2d) 25 (cert. den. 60 S. Ct. 1082), he was on December 31, 1939 domiciled without the District of Columbia. The Board is of the opinion that such contention is sound, and that it must be held as a matter of law that the petitioner was not domiciled in the District on the last day of the taxable year. The Board can find no substantial or essential difference between the facts as found herein and those present in the *Surrency* case. In that case the taxpayer was a Federal employee under the Civil

Service actually residing and making his home in the District of Columbia. The taxpayer there as the taxpayer here was a registered voter and actually and regularly voted in one of the states. In the *Sweeney* case the Board found as a fact, as it has found in this case, that the taxpayer upon accepting employment in Washington had an intention to remain and make his home in the District for an indefinite period of 9 time, and that if the taxpayer had any intention to return to his former home such intention was a floating intention. In this case the taxpayer has very frankly admitted that his "legal residence" is not localized in any dwelling house, structure or at any particular address, while in the *Sweeney* case the taxpayer claimed to reside "legally" at "467 Tremont Street, Boston, Massachusetts." Such distinction in that respect is without substance when it is considered that *Sweeney* in effect admitted that such address in Boston was not genuine, since it was an apartment house in which his mother had formerly resided, and in which neither he, nor any member of his family, nor anyone associated with him had resided for many years prior to the tax day in question in that case. The conclusion of law of this Board that *Sweeney* was domiciled in the District of Columbia was reversed by the Court of Appeals.

The Board, therefore, holds as a matter of law, on the authority of the *Sweeney* case, that on December 31, 1939, the petitioner was not domiciled in the District of Columbia. That being so, it follows necessarily that the income tax in the sum of \$25.55 here in question was erroneously paid to the District of Columbia and must be refunded to the petitioner.

*Decision will be entered for the petitioner.*

JO MORGAN,  
Member Sole



October 24, 1940.

10      BEFORE THE BOARD OF TAX APPEALS  
         FOR THE DISTRICT OF COLUMBIA

HENRY C. MURPHY, Petitioner,

v.

DISTRICT OF COLUMBIA, Respondent.

DOCKET No. 346

RECEIVED AND FILED OCT. 24, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

DECISION

This proceeding came on to be heard upon the petition filed herein, and upon consideration thereof and of the evidence adduced at the hearing on said petition, it is by the Board this 24th day of October, 1940.

ADJUDGED AND DETERMINED That an income tax for the calendar year ending December 31, 1939, in the sum of \$25.55 was erroneously collected from the petitioner by the District of Columbia, and that said petitioner is entitled to a refund of said total sum.

JO MORGAN,

*Member Sole*

11      BEFORE THE BOARD OF TAX APPEALS

HENRY C. MURPHY, Petitioner,

v.

DISTRICT OF COLUMBIA, Respondent.

DOCKET No. 346

FOR THE DISTRICT OF COLUMBIA

RECEIVED AND FILED OCT. 28, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR REVIEW BY THE UNITED STATES  
COURT OF APPEALS FOR THE DISTRICT OF CO-  
LUMBIA OF A DECISION OF THE BOARD OF  
TAX APPEALS FOR THE DISTRICT OF COLUMBIA

The District of Columbia, petitioner in this cause, by Vernon E. West, Acting Corporation Counsel, hereby files its petition for review by the United States Court of Appeals for the District of Columbia of the decision of the Board of Tax Appeals for the District of Columbia rendered October 24, 1940, determining that an income tax for the calendar year ended December 31, 1939, in the sum of \$25.55 was erroneously collected from the respondent by the District of Columbia, and that said respondent is entitled to a refund thereof.

I

The petitioner, hereinafter referred to as the District, is a municipal corporation.

II

NATURE OF THE CONTROVERSY

(a) The controversy involves the domicile of the respondent and the validity of the collection from the respondent by the collecting authorities of the District of an income tax for the calendar year 1939.

(b) The District of Columbia Income Tax Act levies a tax for the taxable year 1939 and succeeding taxable years upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year.

12 (c) The respondent duly reported his income for the calendar year 1939, and on February 21, 1940, paid to the Collector of Taxes, D. C., the sum of \$25.55, being one-half of the tax of \$51.10 computed upon his income for that year. At the same time, the respondent filed with the Assessor, D. C., a claim for refund of the sum paid. On July 17, 1940, the Assessor disallowed the respondent's claim for refund and so

notified the respondent. The proceeding before the Board of Tax Appeals was filed on September 11, 1940, and on October 24, 1940, the Board held that the tax was erroneously collected from the respondent and that he was entitled to a refund of the sum of \$25.55 which he had paid.

### III

The District, being aggrieved by the conclusions of law contained in the opinion of the Board of Tax Appeals, and by its decision entered in pursuance thereto, desires to obtain a review thereof by the United States Court of Appeals for the District of Columbia pursuant to the provisions of Section 4, Title IX, of the District of Columbia Revenue Act of 1937, as amended (Sec. 975, Title 20, D. C. Code, 1929, Supplement V), and Section 34 of the District of Columbia Income Tax Act (Sec. 980gg, Title 20, D. C. Code, 1929, Supplement V).

(s) VERNON E. WEST,

VERNON E. WEST,

*Acting Corporation Counsel, D. C.*

(s) GLENN SIMMON,

GLENN SIMMON,

*Assistant Corporation Counsel, D. C.,*

*Attorneys for the Petitioner,*

*District Building.*

DISTRICT OF COLUMBIA, ss:

Glenn Simmon, Assistant Corporation Counsel, D. C., being duly sworn, says that he is counsel of record in the above cause; that as such counsel he is authorized to verify  
13 the foregoing petition for review; that he has read the said petition and is familiar with the statements contained therein; and that the statements made are true to the best of his knowledge, information and belief.

(s) GLENN SIMMON,

GLENN SIMMON,

*Assistant Corporation Counsel, D. C.,*

SUBSCRIBED AND SWORN TO before me this 28th day of October 1940.

(s) ADAM A. GIEBEL,

*Notary Public* in and for the District  
of Columbia.

My commission expires Sept. 15, 1944.

14 BEFORE THE BOARD OF TAX APPEALS  
FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

v.

HENRY C. MURPHY, Respondent.

DOCKET NO. 346

RECEIVED AND FILED OCT. 30, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

STIPULATION

It is hereby stipulated by and between counsel for the District of Columbia, petitioner, and Henry C. Murphy, respondent, that the findings of fact by the Board of Tax Appeals in the above cause correctly state the evidence presented at the hearing before the Board in said cause.

(s) VERNON E. WEST,

*Acting Corporation Counsel, D. C.,*

VERNON E. WEST,

(s) GLENN SIMMON,

GLENN SIMMON,

*Assistant Corporation Counsel, D. C.,*

*Attorneys for the Petitioner,*

(s) HENRY C. MURPHY,

HENRY C. MURPHY,

*Respondent.*

15 BEFORE THE BOARD OF TAX APPEALS  
FOR THE DISTRICT OF COLUMBIA

HENRY C. MURPHY, Petitioner,

v.

DISTRICT OF COLUMBIA, Respondent.

DOCKET No. 346

RECEIVED AND FILED OCT. 30, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

STATEMENT OF POINTS ON REVIEW

To: Mr. Henry C. Murphy,  
2700 Q Street, N. W.,  
Washington, D. C.,  
Respondent.

The petitioner, District of Columbia, seeing review of the decision of the Board of Tax Appeals for the District of Columbia in the above cause, relies upon the following points on review:

(1) The Board of Tax Appeals erred in holding that the respondent was not domiciled in the District of Columbia on December 31, 1939, for purposes of taxation under the District of Columbia Income Tax Act.

(2) The Board of Tax Appeals erred in failing to hold that respondent was domiciled in the District of Columbia on December 31, 1939, for purposes of taxation under the District of Columbia Income Tax Act.

(3) The Board of Tax Appeals erred in holding that an income tax for the calendar year ended December 31, 1939, was erroneously collected from the respondent by the District and that respondent is entitled to refund thereof.

(s) VERNON E. WEST,

VERNON E. WEST,

*Acting Corporation Counsel, D. C.,*

(s) GLENN SIMMON,  
GLENN SIMMON,  
*Assistant Corporation Counsel, D. C.,  
Attorneys for the Petitioner,*

Service of a copy of the foregoing statement of Point on Review acknowledged this 30 day of October, 1940.

(s) HENRY C. MURPHY,  
*Respondent.*

16      BEFORE THE BOARD OF TAX APPEALS  
             FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

v.

HENRY C. MURPHY, Respondent.

DOCKET NO. 346

RECEIVED AND FILED OCT. 30, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

DESIGNATION OF RECORD

To the Clerk of the Board of Tax Appeals:

You are hereby requested to prepare, certify, and transmit to the Clerk of the United States Court of Appeals for the District of Columbia, with reference to the petition heretofore filed, the transcript of the record in the above cause prepared and transmitted as required by law and by the rules of said Court, and to include in said transcript of record the following documents, or certified copies thereof, to-wit:

- (1) Pleadings before the Board of Tax Appeals.
- (2) Findings of Fact and Opinion of the Board of Tax Appeals.
- (3) Decision of the Board of Tax Appeals.
- (4) Petition for Review, with date of filing.
- (5) Stipulation of evidence.

(6) Statement of Points.

(7) This Designation of Record.

(s) VERNON E. WEST.

VERNON E. WEST.

*Acting Corporation Counsel, D. C.,*

(s) GLENN SIMMON.

GLENN SIMMON.

*Assistant Corporation Counsel, D. C.,*

*Attorneys for the Petitioner.*

Service of a copy of the above Designation of Record acknowledged this 30 day of October, 1940.

(s) HENRY C. MURPHY.

HENRY C. MURPHY.

*Respondent.*

17 BOARD OF TAX APPEALS FOR THE  
DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner.

v.

HENRY C. MURPHY, Respondent.

DOCKET No. 346

CERTIFICATE

I, PHYLLIS R. LIBERTI, Clerk of the Board of Tax Appeals for the District of Columbia, do hereby certify that the foregoing pages, 1 to 17, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Designation of Record in the Petition for Review in the appeal as above numbered and entitled.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the Board of Tax Appeals for the District of Columbia, this 31st day of October, 1940.

PHYLLIS R. LIBERTI,

*Clerk*, Board of Tax Appeals for the  
District of Columbia

Endorsed on cover: No. 7780. District of Columbia, Petitioner, vs. Henry C. Murphy, respondent. United States Court of Appeals for the District of Columbia. Filed Nov. 1, 1940 Joseph W. Stewart, Clerk.



[fol. 19]

Monday, March 10th, A. D. 1941.

\* \* \* \* \*

No. 7779

DISTRICT OF COLUMBIA, Petitioner,

vs.

PAUL M. DEHART;

No. 7780

DISTRICT OF COLUMBIA, Petitioner,

vs.

HENRY C. MURPHY

The argument in the above entitled cause was commenced by Mr. Glenn Simmon, attorney for petitioners, continued by Messrs. Paul M. DeHart pro se No. 7779 and Harry R. Turkel, attorney for respondent in No. 7780, and concluded by Mr. Glenn Simmon, attorney for petitioners.

\* \* \* \* \*

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[fol. 20] UNITED STATES COURT OF APPEALS FOR THE DISTRICT  
OF COLUMBIA

No. 7780

DISTRICT OF COLUMBIA, Petitioner

v.

HENRY C. MURPHY

Petition to Review the Decision of the Board of Tax Appeals  
for the District of Columbia

Decided March 24, 1941

Richmond B. Keech, Corporation Counsel, Vernon E. West, Principal Assistant Corporation Counsel, and Glenn Simmon, Assistant Corporation Counsel, all of Washington, D. C., for petitioner.

Harry R. Turkel, of Washington, D. C., and Henry C. Murphy, pro se, for respondent.

By leave of Court, Phineas Indritz filed a brief as *amicus curiae*.

Before Stephens, Miller and Vinson, Associate Justices

MILLER, Associate Justice:

This is a companion case to No. 7779, decided this day. The applicable statute is the same;<sup>1</sup> the same issue of law is presented, and, in our view, the case is controlled by the reasoning of the decision of this court in *Sweeney v. District of Columbia*.<sup>2</sup> However, in view of certain differences in the facts found by the Board of Tax Appeals, this separate opinion is filed. In the present case, the Board's findings reveal that respondent Murphy graduated from college in 1929; immediately thereafter accepted employment in Detroit, Michigan; took up residence in Detroit; "became a registered voter in Wayne County, Michigan, and still is such; and has ever since voted in the elections and primaries there, the last time being in the Michigan primaries in September 1940." In January 1935, respondent accepted employment in the District of Columbia with the Treasury Department of the United States; was blanketed into Civil [fol. 21] Service in 1938, and is still in government service. Respondent is an unmarried man; he resides in an apartment in the District of Columbia, furnished with his own furniture and equipment; his parents live in California. Concerning his intentions he testified: "I hope to retain the position I have in the Federal Government indefinitely but if I don't I will be going back to Detroit because that is where all my business connections are. I have kept in touch with the people with whom I was in business there and except for the employment here with the Federal Government, Detroit is my home." \* \* \*. Q. Have you a home in Detroit? A. No, I have no property of my own there. I have lived there and voted there and it is the only place

<sup>1</sup> Section 2 (a) of the District of Columbia Income Tax Act (Act of July 26, 1939, 53 Stat. 1087, D. C. Code (Supp. V, 1939) tit. 20, § 980a).

<sup>2</sup> — App. D. C. —, 113 F. (2d) 25, cert. denied, 310 U. S. 631.

where I have connection other than with the Federal Government. It is the place to which I will return if I ever become unemployed by the Government, which I hope will not happen, I would return to Detroit."

The government relies particularly upon certain testimony of respondent—to challenge the finding of the Board that he was not domiciled within the District of Columbia on December 31, 1939—as follows:

Q. \* \* \* What is the difference between your mental operation after you went to Detroit and when you first came to Washington as to the tenure of residence?

A. When I first went to Detroit I thought of a career. I had been a student and I thought I was starting something new. When I came to Washington my original idea was to get two or three years' experience which would be valuable to me elsewhere.

Q. But you have since abandoned that idea?

A. I can say this—at the end of five years here I am no nearer leaving than when I came. You probably don't have the same feeling of permanency here that you would in Detroit.

Q. You didn't have much of a feeling of permanency in Detroit when you left there to come to Washington, did you?

A. No, although I can say that when I left Detroit to come to Washington it was sudden. It was an offer that I couldn't turn down.

Q. After you were here two years you say you abandoned the idea you had which was somewhat nebulous?

A. The idea was nebulous in the first place but I can not say it was abandoned. It has become attenuated. It depends on the circumstances.

Q. If you were offered a position in Boston, New York, or St. Louis you—which is superior to your position here, you would go there, wouldn't you?

A. I very likely would.

Q. You are not insistent that such place be Detroit?

A. I have a preference for Detroit. It is a place where I would fit in more easily.

Q. Suppose your friend who is in Detroit moved to St. Louis to a bank there—

A. He just came from Kansas City to Detroit after the banking holiday. These things are transient. I doubt if

any of us would hesitate to make the change if we could better ourselves.

[fol. 22] Q. But you would go there if you could better yourself?

A. Yes.

Q. Suppose you were offered a satisfactory position in New York, would you go there?

A. Yes.

Q. But until such satisfactory position presents itself you will continue at the Treasury Department, provided your work is as attractive as it is now?

A. That's right.

Q. The thing I meant to suggest, and what I understood you to say your attachment to Detroit was because of your friends there. If you had that contact elsewhere would you go there—if this friend of yours who is in the bank in Detroit were to go elsewhere would you go with him?

A. That is correct.

Although the evidence may be more persuasive in the present case than in the DeHart case, nevertheless, we see no sufficient reason to disturb the findings and determination of the Board. It is common knowledge among highly trained professional and business people that when new opportunities are presented, changes of residence and of domicile may result. But that the respondent in the present case frankly stated his willingness to consider, hypothetically, advantageous and future business possibilities, is not sufficient to offset his positive statement that Detroit is his home; that he intends to return there if and when he becomes disemployed by the government; or to offset the equally convincing proof of intention to maintain his state allegiance while engaged in federal service, which results from the fact that he has maintained his status as a registered voter and "has ever since voted in the elections and primaries there." As we said in the Sweeney case, the rendering of government service in the District of Columbia, which was set apart especially for the purposes of the national government, should not too casually be "visited with the penalty of severing state allegiance or making it dubious." Neither should abandonment of domicile be held

to have resulted unless the federal employee "gives clear evidence of his intention to forego his state allegiance."<sup>3</sup>

Affirmed.

[fol. 23]

Monday, March 24th, A. D. 1941.

No. 7780. January Term, 1941

DISTRICT OF COLUMBIA, Petitioner,

vs.

HENRY C. MURPHY

Petition for review from the Board of Tax Appeals for the District of Columbia.

This cause came on to be heard on the transcript of the record from the Board of Tax Appeals for the District of Columbia and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Miller.

March 24, 1941.

[fol. 24] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Apr. 1, 1941. Joseph W. Stewart, Clerk.

<sup>3</sup> Sweeney v. District of Columbia, — App. D. C. —, —, 113 F. (2d) 25, 32, cert. denied, 310 U. S. 631.

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT  
OF COLUMBIA, APRIL TERM, 1941

No. 7780

DISTRICT OF COLUMBIA, Petitioner,

v.

HENRY C. MURPHY, Respondent

DESIGNATION OF RECORD

The Clerk will please prepare a transcript on application for certiorari to the Supreme Court of the United States in the above-entitled cause, including therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry showing argument of cause.
3. Opinion of the Court.
4. The judgment or decree.
5. This designation.
6. Clerk's certificate.

Richmond B. Keech, Corporation Counsel, D. C.,  
Vernon E. West, Principal Assistant Corporation  
Counsel, D. C., Glenn Simmon, Assistant Corpora-  
tion Counsel, D. C., Attorneys for the Petitioner,  
District of Columbia.

Service of a copy of the foregoing designation of record  
acknowledged this 1 day of April, 1941.

Harry R. Turkel, Attorney for the Respondent.

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[fol. 25] Clerk's Certificate to foregoing transcript omit-  
ted in printing.

[fol. 26] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 26, 1941

The petition herein for a writ of certiorari to the United States Courts of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Stone and Mr. Justice Roberts took no part in the consideration and decision of this application.